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EXAMINER

VU, TUAN A

ART UNIT

PAPER NUMBER

2124

DATE MAILED: 03/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/633,358

Applicant(s)

BARTON, CHRISTOPHER
ANDREW

Examiner

Tuan A Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

DETAILED ACTION

1. This action is responsive to the application filed August 4, 2000, and papers submitted 06/13/2002.

Claims 1-66 have been submitted for examination.

Drawings

2. The drawings are objected to because of the following informalities.

First, the pen-written and hand-scribbled naming of elements or portions of figures, e.g. Fig. 1-5, needs to be changed into printed form. Second, the thickness and complexion of the text and lines used in the figures are inconsistent, making the drawings often hardly legible (e.g. Fig. 4), rendering them casual and unfit for representing an official record.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 14 is objected to because of the following informalities: the limitation "wherein said predetermined source is contains an updated version...", appears to have a redundant term, i.e. "is"; and it should be removed as in "wherein said predetermined source [is] contains...".

The examiner will proceed based on the above interpretation.

4. Claim 20 is objected to because there appears to be a misprint in the reciting of claim 15 as being a base claim (line 1 of claim 20). The examiner recognizes that claim 15 must rather be claim 19 to examine the merits of the claim.

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Appropriate correction is required.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 3, 6, 8,10, 23, 25, 28, 30, 32, 38, 45, 50, 52, 54, and 60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4-7,11, 12, 15-17, 21, and 24-27 of copending Application No. 09/944,114(hereinafter '114). This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are method, article of manufacture, or system claims representing the same invention and/or differ by features that would have been obvious to one of ordinary skill in the art.

The conflicting claims are mapped according to the following scheme.

Instant Claims	Copending '114 Claims
1	11
3,25	12,2

6,28,50	17,7,27
8,30,52	15,5,25
10,32,54	16,6,26
38,60	4,24
23	1
45	21

Following is a more specific description of the above conflicting claims.

The instant claims 1(computer product), 23 (method), and 45 (apparatus) comprise respectively, the code segments, the steps, and the logics, operable for updating a computer file for use by a computer; detecting whether a tag is indicative of existence of an upgraded file for a file to be used by a computer to be updated using said code of the program product, method, or apparatus; and for triggering the download from a source provider of said updated version of said computer file for use by said computer.

Copending application '114 claims 1(method), 11(computer program), and 21(apparatus) also comprise, respectively, the steps, the code segments, and the logics operable for triggering by a provider the updating of a computer file for use by a computer, providing by said provider of the upgraded version of said computer file downloadable by said computer, sending a tag indicating said updated computer file is available to said computer.

But the above copending claims recite the steps/code for sending a tag indicative of the availability of the updated computer file and for providing an updated version at a location for download, which are not matching with instant claims reciting of steps/code for detecting the tag for indication that an updated version of file exists and for triggering a download upon such

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detection. One skill in the art would recognize a network paradigm for performing the recited limitations from both sets of claims, such that the instant claims are performing the steps/method limitations of the receiving end of such paradigm, whereas the copending claims steps/code are performing the limitations of the sending end. It would ^{have been} ~~be~~ obvious for one of ordinary skill in the art to modify the steps/code of sending and providing a updated file, germane to the sending end as recited by the copending claims, and provide the steps/code limitations such as detect the tag in the data received from the provider, and trigger the download upon the detection of an existing updated file version in such tag because this would fulfill the correspondence between the sending end and the receiving end of the updating/download paradigm as recognized.

As per instant claims 3, 25, respectively, '114 claims 12, 3, also recite that tag is part of an email message.

As per instant claims 6, 28, 50, respectively, '114 claims 17, 7, 27 also recite a received tag, such tag indicative of a version level of said computer file in use by said computer (p. 5)

As per instant claims 8, 30, 52, respectively, '114 claims 15, 5, 25 also recite that computer file is a virus definition file.

As per instant claims 10, 32, 54, respectively, '114 claims 16, 6, 26 also recite that computer file is an anti-virus computer program file.

As per instant claims 38, 60, respectively, '114 claims 4, 24 also recite that computer is connected to the providing source location via an Internet link, implying a remote location.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 4-7, 12, 14-15, 17, 22-24, 26-29, 34, 36-39, 44-46, 48-51, 56, 58-61, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath et al., USPN: 6,360,366 (hereinafter Heath), in view of Filepp et al., US Pub No 2003/0018527 (hereinafter Filepp).

As per claim 1, Heath discloses a computer program method for updating a computer file used by a computer (Fig. 2B; *Launcher* -- 3A), said computer program method comprising: code to detect within data received by said computer (e.g. col. 2, lines 2-10) an indication of existence of an updated version of said computer file (*catalog, version* -- col. 4, line 58 to col. 5, line 22); and update triggering code for detection of said tag to trigger downloading from a predetermined source (*network address(es)* – col. 5, lines 18-24) to provide said updated version of said computer file for use by said computer (e.g. Figs. 3A, 4D).

However, Heath does not explicitly disclose a computer program product. Official notice is taken that a computer system or method always get implemented in a program code which is incorporated in the computer program product, and this was a well-know concept at the time of the invention. It would have been obvious for one of ordinary skill in the art at the time the invention was made to implement Heath's method into a program code incorporated in a computer program product because this would enable the useful embodiment of the method into a product and thus facilitate the product distribution, sale and management.

Further, Heath discloses a version detecting code (e.g. step 416, Fig. 4D) upon receiving of catalog data from a server in a distributed system (Figs. 1, 2B); but does not specifically disclose detecting a tag wherein the tag is indicative of an updated version of said computer file.

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Filepp, in a system to distribute advertised objects data for update to network users analogous to the distribution of computer files in Heath's method, discloses the use of a special field, i.e. equivalent to tag as claimed, in the transmitted data header to establish control of a version of data to update at the receiving station (e.g. Fig. 5A; *Byte 18* -- Fig. 4b; p. 7, paragraph 0089, 0090). It would have been obvious for one of ordinary skill in the art at the time the invention was made to further implement the step of detecting a version identification as taught by Heath above by adding the special field or tag as suggested by Filepp because updating of software relies heavily of the version of data to update, as taught by Heath's technique above, therefore by using a special means as taught by Filepp to tag the version indication in Heath's method would enhance the implementation of such version detecting such as to impart more ease and speed in accessing, modifying and managing of data distributed among a large number of network recipients (Filepp: p. 7, paragraph 0088; p. 8, paragraph 0092).

As per claim 2, Heath does not disclose that the tag in the received data by the computer is embedded in a header portion of said data. But Filepp, in the method already mentioned in claim 1, discloses the tagging of the version of data in a header portion of the data (e.g. Header 551 -- Fig. 4A; *Byte 18* -- Fig. 4B). It would have been obvious for one of ordinary skill in the art at the time the invention was made to include a tag, i.e. a version indication as initially mentioned by Heath then modified into a tag by Filepp, into a header because this would facilitate, at the receiving computer end, the speedy control, access, and managing of incoming data from various parts of the network (Filepp: p. 7, paragraph 0088; p. 8, paragraph 0092).

As per claim 4, Heath further discloses that said predetermined source provides one updated version of the computer file or modifying data for modifying such computer file to form said update version (e.g. col. 6, lines 24-37; steps 416, 418, Fig. 4D; step 430, fig. 4E).

As per claim 5, Heath combined with the teachings of Filepp discloses the tag including version identifier as addressed in claim 1 above. Further, Heath discloses code to compare said version identifier with data indicative of a version level of said file to determine if an updated version of said file exists (e.g. *new catalog file, catalog representation in cache* -- col. 5, line 59 to col. 6, line 1; Fig. 3A,D).

As per claim 6, Heath does not disclose a tag insertion code but Filepp discloses a special field, i.e. tag indicative of a version level, within the header of data received by the computer targeted for file update/download (re claim 1), and the incorporation of such tag in such received data header (Fig. 5A; *Byte 18* -- Fig. 4b); hence, it would have been obvious for one of ordinary skill in the art at the time the invention was made to also provide the code to insert such tag as taught by Filepp in the data received by the computer whose file is to be updated in Heath's system for the same benefits related to having a tag in such data as mentioned in the corresponding claim 1 rejection.

As per claim 7, the combined teachings of Heath and Filepp teaches the inserting in data of tag indicative as to whether a version level of the computer file is currently used by the computer or newer than that version used by the computer (re claim 1 and 6); but does not specify not inserting a tag when said data already includes the tag. It would have been obvious for one of ordinary skill in the art at the time the invention was made to include in the code to insert tag as taught by the combination of Heath and Filepp, the ability of not creating any tag

when the received data already has the tag because this would save extraneous code resources in that the duplication of an already-performed process is obviated.

As per claim 12, Heath (with the teachings of Filepp) discloses that the tag includes parameters indicative of operations previously performed upon said data (e.g. col. 3, lines 12-25; Fig. 3D; *representation of catalog in cache* – col. 5, line 59 to col. 60, line 1; col. 6, lines 15-18 - -- Note: Heath's disclosing of indicators, i.e. tags via the teachings of Filepp, inside of the data, i.e. catalog previously stored, such tag indicative of what version number(i.e. parameter) has been previously loaded and used in the computer, or previous updating operations recorded, is equivalent to parameters indicating previous operations performed using the data).

As per claims 14 and 15, Heath discloses that (re claim 14) a predetermined source contains an updated version of said computer file (e.g. col. 4, lines 54-58; Components 29 --Fig. 2B); and that (re claim 15) such source is remote from said computer (e.g. step 420 – Fig. 4D).

As per claim 17, Heath in combination of Filepp's teachings on the tag, discloses that, in the tag data received for detecting an updated version by the computer, the tag data is encrypted tag data, and that the tag detecting code includes code for decryption of said tag data (e.g. step 310 --Fig. 3A; col. 5, lines 22-31; col. 6, lines 6-10 – Note: authentication of encrypted components in the catalog, i.e. tag data as claimed, is equivalent to having decryption code therefor).

As per claim 22, Heath discloses a computer program comprising code to insert an indicator within data indicating a version level of a first computer file (*catalog, version* -- col. 4, line 58 to col. 5, line 22), said indicator operable to trigger an update of an older version file in

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use by a second computer (e.g. Figs. 3A, 4D) when said indicator data is received by the second computer (e.g. col. 2, lines 2-10).

Heath does not disclose a computer program product, nor does he specify inserting a tag within the data received by the second computer. But these limitations have been addressed in claim 1 above using the teaching of Filepp, hence are rejected herein using the same rationale as above.

As per claim 23, this is the method claim of claim 1 above and is rejected using the same rejection set forth in claim 1 above, except for the limitation about a computer program product, which does not apply herein.

As per claims 24, 26-29, these claims include similar limitations of claims 2, 4-7 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claims 34, 36-39, these claims include similar limitations of claims 12, 14-17 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claim 44, this is the method claim of claim 22 above and is rejected using the same rejection set forth therein.

As per claim 45, this is the apparatus version of claim 23 above and is rejected using the same rejection set forth in claim 23 above.

As per claims 46, 48, in reference to claim 44, these claims include similar limitations of claims 2, 4 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claims 49-51, in reference to claim 45, these claims include similar limitations of claims 5-7 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claims 56, and 58-61, these claims include similar limitations of claims 12, and 14-17 above, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claim 66, this claim is the apparatus version of claim 22 above; hence is rejected herein using the same corresponding rationale set forth therein.

9. Claims 3, 25 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath et al., USPN: 6,360,366, in view of Filepp et al., US Pub No 2003/0018527, as applied to claims 1, 23, 44 above, and further in view of Cheng et al., USPN: 6,151,643 (hereinafter Cheng).

As per claim 3, the combination of Heath and Filepp does not specify that the received data is an email message. However, Cheng, in a system to advertise and send updates to client computer analogous to the system of Heath combined with the teachings of Filepp for updating computer files, discloses the use of email to send notification of newer version software products (e.g. box 309 – Fig. 3; col. 19, lines 61-67; col. 20, lines 19-32). It would have been obvious for one of ordinary skill in the art at the time the invention was made to implement the use of email as means to notify the computer targeted to update a file therein as suggested by Cheng, and apply it to Heath method combined with the teachings of Filepp, because email is one of the most popular, easy-to-use and available means of public notification in today's internet

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communication, thus further enabling Heath's system (with the teaching of Filepp) to multicast periodic notifications on software updates availability just as suggested by Cheng.

As per claim 25, this claim is the method version of claim 3 above; hence is rejected herein using the same corresponding rationale set forth therein.

As per claim 47, in reference to claim 44, this claim includes the same limitation in claim 3 above, hence is rejected herein using the same corresponding rationale set forth therein.

11. Claims 8-11, 13, 16, 21, 30-33, 35, 43, 52-55, 57, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath et al., USPN: 6,360,366, in view of Filepp et al., US Pub No 2003/0018527, as applied to claims 1, 11, 12, 23, 34, 45, 56 above, and further in view of Hodges et al., USPN: 6,053,423 (hereinafter Hodges).

As per claims 8, 9, and 10, the combined teachings of Heath and Filepp teach about updating and downloading files but do not teach that such file is (re claim 8) is a virus definition file,(re claim 9) a virus detection program file,(re claim 10) a anti-virus computer program file. Hodges teaches a system to upgrade antivirus applications (Figs. 1-12) including virus definition files (e.g. VIRUS-SIGSW95.DAT-- Fig. 11), anti-virus applications and detection files(e.g. col. 2, lines 22-32; antivirus_AppW95 – Fig. 11). It would have been obvious for one of ordinary skill in the art at the time the invention was made to include in the type of computer files to update in Heath system (with the teachings of Filepp) the anti-virus related computer files as claimed because this would provide well-known and asked-for security features to the communication and data importing scheme as disclosed by Heath and Filepp within a computer network.

As per claim 11, the combined teachings of Heath and Filepp do not explicitly disclose that the tag includes data indicative of a version level of a computer virus definition file, a virus detection engine program file, or an anti-virus program file. In view of the teachings of Hodges above, combined with the tag teachings as set forth in claim 1 above, these limitations would have been obvious for one of ordinary skill in the art at the time the invention was made for the same reasons set forth in claims 1 and 8, 9, 10 above.

As per claim 13, Heath discloses a virus scanning operation during the retrieving of the data including the tag (col. 6, lines 6-12); but does not specify that such tag is indicative of previous anti-virus scanning operations. However, by virtue of Hodges' teachings (re claims 8-11) and Heath/Filepp's tag parameters indicating of previously performed operations(re claim 12) as mentioned above, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement tags as taught by Heath/Filepp so that it would indicate, by way of Hodges' teaching, about previously antivirus-related files operations performed just as it would indicate which previous file usage or loading had been saved in the catalog cached in the receiving computer of Heath system(re claim 12) for the same benefits as mentioned in claims 8-11 above.

As per claim 16, with reference to claim 11, see claim 15 above for corresponding rejection, and additionally Heath: col. 1, lines 40-53.

As per claim 21, Heath discloses including in the data (*catalog*) additional parameters needed in the computer environment for the component files installation as well as future file versions and associated components (col. 5, lines 32-47); but does not specify not triggering an update if the tag indicates that the updated version is some pre-determined versions ahead of said

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computer file currently used by the computer. One of ordinary skill in the art would recognize from Heath above teachings that if a number of versions ahead of the file version in use by the current operating system are not compatible with the computer installation environment and settings provided in said data (*catalog*), there is suggestion that those versions would not trigger an update. Further, Hodges, in the system from claims 8-11 above, discloses the mapping of operating system and computer file version for upgrade in a listing analogous to the catalog of Heath(e.g. WIN 95 – Fig. 11), suggesting thereby that versions later than those compatible with a specific operating system, e.g WIN 95, will not trigger an update. Hence, using both suggestions by Heath (combined with the tag teachings of Filepp) and Hodges, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement code in Heath 's method (with the tag teachings of Filepp) so that it would not trigger an update should a version detected by the tag indicates that such version is some numbers ahead of the current version (e.g. Win 95) used by the computer, just as suggested by Hodges over the teachings of Heath. One of ordinary skill in the art would be motivated to do so because this would automate an update based on a predetermined settings thus alleviate data parsing time and mostly effort from additional (e.g. administrative) human intervention (Hodges: col. 4, lines 5-25).

As per claims 30-33 and 52-55, these claims include similar limitations of claims 8-11, respectively; hence are rejected using the same corresponding rationales set forth therein.

As per claims 35 and 57, see rejection of claim 13 above for corresponding rejection.

As per claims 43 and 65, these claims include limitations that have already been addressed in claim 21 above; hence are referred to claim 21 for corresponding rejection.

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12. Claims 18-19, 40-41, and 62-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath et al., USPN: 6,360,366, in view of Filepp et al., US Pub No 2003/0018527, as applied to claims 1, 23, 45 above, and further in view of Cowan, USPN: 6,031,830 (hereinafter Cowan).

As per claims 18 and 19, Heath (with Filepp's teachings) discloses a time delay period during downloading tag data (step 508 – Fig. 5) but does not specify (re claim 18) waiting for an initial delay period following detection of said tag before downloading of said updated version computer file; and (re claim 19) if downloading of such file fails, then waiting for a failure delay before re-triggering a download of such updated version file. Cowan, in a system to upgrade remote devices operating software, discloses receiving the available software within a predetermined time or otherwise retransmitting the request to retrieve software (Fig. 10; col. 15, lines 10-17). It would have been obvious for one of ordinary skill in the art at the time the invention was made to apply the waiting for an initial period prior to retrieving the software file, i.e. a failure period, before restarting, i.e. re-triggering, the request to download as taught by Cowan to the method of downloading components after detecting the tag in Heath's system (with Filepp's teachings) because this would alleviate the time for which a download request has to be allotted, while not disregarding any failure possibility, thus making the download/retrieval process as taught by Heath (with Filepp's teachings) more time and resource efficient, like Cowan suggests in col. 2, lines 13-35.

As per claims 40 and 41, in reference to claim 23, these claims include similar limitations to claims 18 and 19 above, respectively; hence are rejected using the same corresponding rationale set forth therein.

As per claims 62 and 63, in reference to claim 45, these claims include similar limitations to claims 18 and 19 above, respectively; hence are rejected using the same corresponding rationale set forth therein.

13. Claims 20, 42, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath et al., USPN: 6,360,366, in view of Filepp et al., US Pub No 2003/0018527, and Cowan, USPN: 6,031,830 as applied to claims 19, 41, 63 above, and further in view of Lambert et al., USPN: 6,038,601 (hereinafter Lambert).

As per claim 20, in reference to claim [15] 19, the combination Heath/Filepp/Cowan does not disclose that the failure delay period is a pseudo-random value determined by update triggering code. Lambert, in a system to distribute document data to a requesting client, discloses generating a random number to set the wait time prior to triggering the request to receive data (e.g. col. 27, lines 32-42). Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to set a pseudo-randomized value as suggested by Lambert for the delay period as suggested by Cowan and apply it to the download/update process disclosed by Heath (with Filepp's teachings) because this would minimize the risks of overloading the receiving end buffering capability and better identify the source sender due to unreliability of the transmission protocol (Lambert: col. 27, col. 43-53) used in the network data downloading scheme disclosed by Heath/Filepp.

As per claim 42, in reference to claim 41, this claim includes similar limitations to claim 20 above, respectively; hence is rejected using the same corresponding rationales set forth therein.

As per claim 64, in reference to claim 63, see claim 20 for rejection.

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Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (703)305-7207. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (703)305-9662.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:


(703) 746-7239, (for formal communications intended for entry)

or: (703) 746-7240 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA. , 22202. 4th Floor(Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

VAT
March 8, 2003



JOHN CHAVIS
PATENT EXAMINER
ART UNIT 2124